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Misleading Congress: CMS Acting Administrator Offers False Testimony to Congress on State Exchanges

Prepared by the Energy and Commerce Committee, Majority Staff

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I. Executive Summary

The Centers for Medicare and Medicaid Services (CMS) is the federal agency charged with overseeing the state-based exchanges (SBE) established under the Patient Protection and Affordable Care Act (PPACA). The exchanges offer health care insurance plans to individuals through websites established and maintained by the state. As part of its oversight of the exchanges, CMS must ensure federal grant dollars awarded to SBEs are legally and appropriately spent. Only 16 states and the District of Columbia set up SBEs. Of those, four have already failed to date. When asked under oath about the status of American taxpayer dollars invested in the exchanges, Acting Administrator Andy Slavitt testified before the House Energy and Commerce Committee's Subcommittee on Oversight and Investigations in December 2015 that SBEs returned over $200 million in grant dollars to the federal government. But information and documents CMS recently provided to the committee fail to corroborate Mr. Slavitt's testimony and raise significant questions regarding the truthfulness of his statements.

The purpose of the December 8, 2015, hearing entitled, "An Overdue Checkup Part II: Examining the ACA's State Insurance Marketplaces" was to examine how state-based exchanges spent grant dollars, and better understand the sustainability challenges facing the exchanges, and CMS' role in overseeing the SBEs. In his opening remarks before the committee, Mr. Slavitt testified that "over $200 million of the original grant awards have already been returned to the federal government, and we're in the process of collecting and returning more." After the hearing, it was widely reported by the media that CMS recouped over $200 million from failed state exchanges.

Following the hearing, the committee requested CMS provide documents and information supporting Mr. Slavitt's $200 million figure. After repeated requests for this information, on March 18, 2016, CMS finally produced a chart to the committee outlining the grants awarded to 49 states and the District of Columbia, the amount of each grant, and the amount that CMS de-obligated. This chart is included in Appendix B to this report. CMS did not provide any primary source documents or other materials supporting the figures in the chart. According to the chart, CMS only recovered $21.5 million in unspent federal grant dollars from the SBEs out of the approximately $4.6 billion originally awarded by the agency. The chart also reflects that states that did not establish SBEs returned nearly $300 million in unspent grant dollars to the federal government. This sum, however, was returned only because these states never established a SBE, and therefore had no use for the funds they were granted. This $300 million was not part of the $4.6 billion disbursed for the purposes of establishing the 17 SBEs, but was part of a larger pool of money that went to 49 states and the District of Columbia.

Mr. Slavitt's testimony misled the committee in two ways: he misstated the amount of grant money returned to the Treasury, and he wrongfully implied that the funds were returned because of improper spending and CMS' oversight efforts. According to CMS' chart, CMS recovered a small fraction of the $200 million Mr. Slavitt declared at the committee's December

8 hearing. In fact, the federal government has only reclaimed $21.5 million from the 17 SBEs. Further, CMS did not "recoup" these dollars. These funds were de-obligated, because the time for the grant had expired or the funds were no longer needed. None of the funds reflect grant dollars recouped by CMS due to improper spending. CMS, however, never corrected or revised Mr. Slavitt's testimony before the committee. Further, CMS does not appear to have corrected the record with the numerous news outlets that reported CMS recouped $200 million from failed SBEs.

CMS is charged with an important task to oversee the SBEs to ensure taxpayer dollars are spent appropriately. If CMS is satisfactorily accomplishing its mission, the agency should be at the ready to provide timely and accurate information to Congress, especially with regard to how taxpayer dollars are spent and recovered. If CMS is incapable of providing this information, it calls into question whether CMS is effectively overseeing the SBEs and lawfully implementing the Affordable Care Act.

II. Findings

- Mr. Slavitt's testimony that "over $200 million" has been returned to the federal government is not supported by any CMS documents, including a chart created by the CMS staff and produced to the committee.

- Mr. Slavitt's testimony greatly overstated the sum returned to the Treasury from state-based exchanges—by nearly $180 million. CMS only recouped $21.5 million from the 16 states and the District of Columbia that actually established state-based exchanges.

- CMS does not appear to have made an effort to correct the record when it was widely reported that "over $200 million" was returned to the Treasury because of improper spending and CMS' oversight efforts. Despite Mr. Slavitt's implication otherwise, CMS did not recover any of the funds due to improper spending. Instead of recouping funds from the exchanges, CMS simply "de-obligated" these funds because the time for the grant had expired or the funds were no longer needed.

III. State-Based Exchanges

The Patient Protection and Affordable Care Act authorized the Secretary of the Department of Health and Human Services (HHS) to establish health insurance exchanges to sell private insurance policies in all 50 States and the District of Columbia.[1] These exchanges were intended to provide individuals with an online portal to compare plans and purchase health insurance.

CMS awarded billions of dollars to states to help them establish their own state-based exchanges. Ultimately, only 16 states and the District of Columbia decided to establish exchanges. Several of these SBEs have struggled to become self-sustaining. For those states that did not establish SBEs, HHS created a federally facilitated marketplace (FFM) and an IT platform instead.[2]

A. Background on Establishment Grants

HHS charged CMS with awarding grants to the states to help them plan and establish the exchanges. These grants are known as "establishment" grants. CMS is also responsible for overseeing how these grant dollars are spent. When the law was passed, lawmakers assumed that most states would establish their own state-based exchanges.[3] Accordingly, CMS awarded over $5 billion in federal grants to 49 states and the District of Columbia.[4]

Only 16 states and the District of Columbia, however, established SBEs.[5] As shown in the table on the next page, HHS awarded approximately $4.6 billion to these 17 SBEs to plan and establish their exchanges.[6] The 17 SBEs spent the majority of the grant money on IT costs for setting up websites to enroll individuals into health insurance plans. Grant funds were also spent on outreach strategies, such as in-person consumer assistance, training programs, development of call centers, and staff salaries.[7]

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[1] 42 U.S.C. § 18031.
[2] 42 U.S.C. § 18041(c).
[3] Robert Pear, *Four Words That Imperil Health Care Law Were All a Mistake, Writers Now Say*, N.Y. TIMES, May 25, 2015 ("[S]enators and staff lawyers came to believe that some states — 'five or 10 at the most' — would choose not to set up exchanges, said Christopher E. Condeluci, who was a staff lawyer for Republicans on the Finance Committee.").
[4] Alaska was the only state that did not apply or receive a grant from CMS to establish a state-based exchange. *See* Centers for Medicare & Medicaid Serv., *Health Insurance Exchange Establishment Grants*, *available at* www.cms.gov/cciio/resources/marketplace-grants/ (last visited April 28, 2016).
[5] For the 34 states that declined to establish a SBE, the law directs HHS to establish a "federally facilitated" exchange, also known as "Federally-Facilitated Marketplace" within that State. *See* 42 U.S. Code § 18041(c).
[6] Centers for Medicare & Medicaid Serv., *Health Insurance Exchange Establishment Grants*, *available at* www.cms.gov/cciio/resources/marketplace-grants/ (last visited April 28, 2016).
[7] *Id*.

State-Based Exchange	Grant Award
California	1,065,683,056
New York	575,079,804
Washington	302,333,280
Kentucky	289,303,526
Massachusetts	233,803,787
Vermont	199,718,542
District of Columbia	195,141,151
Maryland	190,130,143
Minnesota	189,363,527
Colorado	184,986,696
Connecticut	175,870,421
Rhode Island	152,574,494
Idaho	105,290,745
Oregon	305,206,587
New Mexico	123,281,600
Nevada	101,001,068
Hawaii	205,342,270
Total	**$4,594,110,697**

CMS awarded nearly $1 billion to the 34 states that never established SBEs and elected to use the FMM established by HHS and/or its IT platform.[8] When these 34 states declined to establish a SBE, CMS de-obligated the unspent grant money because it would not be used for the intended purpose of the grant. As a result, the remaining balance returned to the Treasury by these states was not a result of CMS' oversight actions, but rather the state's own decision to forgo establishing a SBE, thus forfeiting the grants. These 34 states have never been part of the conversation about the success or failure of the SBE model because SBEs in these states never existed. Appendix A provides a breakdown of the spending for each exchange model.

B. State-Based Exchanges Encounter Difficulties

By law, SBEs were supposed to be self-sustaining—that is, have a funding source other than federal grant dollars—by January 1, 2015.[9] But SBEs are struggling to find additional sources of funding to support expensive operations and sophisticated IT systems to support enrollment.

In an attempt to help the struggling SBEs, CMS has been awarding "No-Cost Extensions" to SBEs so they can continue to spend federal grants on "establishment" activities in

[8] *Health Insurance Exchange Establishment Grants supra* note 6.
[9] 42 U.S. Code § 18031(a)(4)(B).

2015 and 2016.[10] Currently, every SBE has utilized these No-Cost Extensions and thus, continues to spend federal grant money to support itself.[11] Nevertheless, of the 17 SBEs, four—Oregon, Hawaii, Nevada, and New Mexico—have already closed their doors. Those four SBEs joined the rest of the 34 states that use the federal IT platform, Healthcare.gov, to enroll individuals into health insurance plans. Meanwhile, many of the 13 remaining SBEs continue to face low enrollment numbers coupled with high operational costs, raising concerns that more SBEs will choose to shut down.[12]

In April 2015, the HHS Office of Inspector General (OIG) alerted CMS that these faltering SBEs may be improperly using establishment grants to cover operational costs.[13] For example, HHS OIG found that CMS failed to notice that the SBE in the state of Washington used federal establishment grant dollars on "operational costs," such as postage, in violation of federal law.[14] The OIG noted in its alert that SBEs are facing uncertain financial futures, based both on media reports and its review of state exchanges' budget information. Because of this uncertainty, the OIG highlighted the risk that state exchanges might use establishment grant funds to cover operational costs.

IV. The Committee's Investigation

After the HHS OIG alert and several high-profile SBE closures, the committee heightened its scrutiny of the establishment and sustainability of the state-based exchanges.

The committee's oversight has primarily focused on the expenditure of federal funds on SBE activities and the long-term sustainability challenges SBEs face. The committee seeks to determine whether federal funds have been spent in accordance with the law, and whether CMS has conducted proper oversight to safeguard the taxpayers' billion dollar investment in these SBEs. If SBEs spent federal grant dollars unlawfully, it is CMS' responsibility to recoup these dollars on behalf of the taxpayers. Recoupment is distinct from de-obligation, which occurs when the grantee has not spent the full amount of the grant award. When the end date of the grant arrives, or all the work associated with the grant is completed, funds that have not been spent are "de-obligated," meaning the grantee is no longer allowed to spend those funds.

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[10] Centers for Medicare and Medicaid Services, *FAQs on the Use of 1311 Funds and No Cost Extensions*, *available at* www.cms.gov/cciio/resources/fact-sheets-and-faqs/downloads/no-cost-extension-faqs-3-14-14.pdf (Mar. 14, 2014).

[11] Centers for Medicare & Medicaid Serv., *1311 Deobligations and Spending* (on file with Committee) (hereinafter "CMS Chart").

[12] Memorandum from Majority Staff to Members of the H. Comm. on Energy & Commerce, Subcomm. on Oversight & Investigations, *An Overdue Checkup: Examining the ACA's State Insurance Marketplaces* (Sept. 25, 2015).

[13] Dept. of Health & Human Serv., Office of the Inspector Gen., *Early Alert: Without Clearer Guidance, Marketplaces Might Use Federal Funding Assistance for Operational Costs When Prohibited by Law* (A-01-14-02509) (Apr. 27, 2015).

[14] *Id*.

The committee convened two hearings before its Subcommittee on Oversight and Investigations to examine issues surrounding the struggling SBEs. The first hearing was held on September 29, 2015, featuring testimony from the leaders of six state exchanges—California, Connecticut, Hawaii, Massachusetts, Minnesota, and Oregon.[15] Witnesses testified about the challenges of running an exchange, including growing maintenance costs and lower than expected enrollment numbers, as well as interactions with CMS on federal funding for the SBEs. To expand upon the discussion at the hearing, the committee wrote letters to all 17 SBEs in October 2015, requesting information and documents about each SBE's financial viability and expenditure of federal dollars.[16]

The committee held its second hearing on December 8, 2015, where Acting Administrator Andrew Slavitt was the sole witness.[17] The committee requested Mr. Slavitt's testimony to understand CMS' oversight protocols to ensure the 17 SBEs were not spending federal dollars improperly and assess the long-term sustainability of SBEs still in operation.

V. Acting Administrator Slavitt's Testimony

At the December 2015 subcommittee hearing, Members sought an opportunity to hear from CMS' leader about the struggling SBEs. According to the hearing's published memorandum, the subcommittee specifically convened the hearing to "understand the sustainability challenges state exchanges are facing" and "examine how federal establishment grant dollars were spent."[18]

In his opening oral statement, Mr. Slavitt focused solely on the 17 SBEs established under PPACA, and elaborated on CMS' oversight priorities for the SBEs (as indicated by the bolded language):

> Setting up and managing **State marketplaces** is a significant task, and I would like to talk now about how we provide oversight and assistance to the marketplaces but also watch over the American taxpayers' dollars.
>
> In considering our oversight role, it is important to understand all the responsibilities of a **State-based marketplace.** States must establish the infrastructure to review and qualify health plan offerings, develop online and call center capabilities to provide eligibility and enrollment services,

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[15] H. Comm. on Energy & Commerce, Subcomm. on Oversight & Investigations, *An Overdue Checkup: Examining the ACA's State Insurance Marketplaces*, 114th Cong. (Sept. 29, 2015).
[16] *See, e.g.,* Letter from Hon. Fred Upton, Chairman, H. Comm. on Energy & Commerce, to Jeffrey Kissel, Executive Director, Hawaii Health Connector, (Oct. 14, 2015).
[17] H. Comm. on Energy & Commerce, Subcomm. on Oversight & Investigations, *An Overdue Checkup Part II: Examining the ACA's State Insurance Marketplaces*, 114th Cong. (Dec. 8, 2015) (hereinafter "Part II").
[18] Memorandum from Majority Staff to Members of the H. Comm. on Energy & Commerce, Subcomm. on Oversight & Investigations, *An Overdue Checkup Part II: Examining the ACA's State Insurance Marketplaces* (Dec. 4, 2015).

interface with State Medicaid systems, develop cybersecurity capabilities, outreach and education functions, and dozens of other activities.

* * *

In discussing now our three key oversight priorities, I want to focus in particular on those situations where States have had more significant challenges. Our first priority is to be good stewards of the Federal taxpayers' dollars. This means returning unspent dollars to the Treasury and closing grants, collecting improperly spent dollars, and preventing more from going out the door. **Over $200 million of the original grant awards have already been returned to the Federal Government, and we're now in the process of collecting and returning more.** This also means no new money to fix IT problems was given or will be given to any of the five States or any other State that ran into difficulties. We should not pay twice for the same result.

Second, our job is to manage every dollar tightly. I have always been a big believer in preventing problems so we can spend less time recovering from them. Every **State-based marketplace** has external funding sufficient to run their operations. Federal money may not be used for regular operations. We do a line-item review of the expenditures a State proposes to ensure compliance with the law and conduct audits to make sure there's a full accounting of all Federal dollars. Important to our approach, we maintain control of the purse strings, and 69 times this year we've denied use of Federal funds. We also make adjustments through readiness reviews, detailed reporting, regular audits, and site visits.

Third, and perhaps most important, we assist the State in getting a return on their investment, as measured by the value they provide to their State. . . . As of June 30, **State-based marketplaces** provided coverage to approximately 2.9 million people, and private health plans have helped millions access Medicaid, and the uninsured rates in these States have declined an average of 47 percent since 2013 to under 10 percent.[19]

Mr. Slavitt's opening statement clearly and distinctly focused on issues facing the state-based exchanges.

[19] Part II, *supra* note 17 (emphasis added).

Mr. Slavitt's testimony that "over $200 million" had been returned to the federal government came as a surprise to committee members and staff. CMS did not include the $200 million figure in Mr. Slavitt's prepared written remarks submitted for the record the day before the hearing. The $200 million declaration became a major focus of the news coverage of the hearing:

- The *Wall Street Journal* reported that "[t]he Obama administration on Tuesday said it has recouped more than $200 million in funding given to states that faltered in setting up their own health-insurance exchanges."[20]

- *Bloomberg* reported that "[t]he federal government recouped more than $200 million from Affordable Care Act state-run health insurance marketplaces that wasn't spent in accordance with federal guidelines, and it is in discussions with Maryland and two other states to collect more, a federal official told a House panel Dec. 8."[21]

- *The Hill* reported that Mr. Slavitt "said $200 million in federal funds had already been returned from states, and that CMS emphasizes prevention of federal funds being granted improperly in the first place."[22]

- The *Washington Examiner* reported that "[i]n a charged oversight hearing focused on the new Obamacare marketplaces, Centers for Medicare and Medicaid Services Acting Administrator Andy Slavitt said his agency is requiring Maryland to pay back dollars it either misspent or no longer needs and is working on collecting money from three other states spent on their failed exchanges. And CMS has recovered $200 million from states so far, he said."[23]

To the committee's knowledge, CMS has made no effort to correct the record with those news outlets. Following the hearing, the committee promptly requested that CMS provide documents and information supporting the $200 million figure, and to explain how it recovered $200 million from the state exchanges, including from which states and for what reasons the money was recovered.[24] Despite numerous follow-up emails and phone calls from committee staff requesting the information, and an in-person briefing with CMS Chief of Staff Mandy Cohen, CMS did not provide documents or information regarding the $200 million figure until March 18, 2016, over three months later.

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[20] Stephanie Armour, U.*S. Recoups Funds from States That Faltered on Health Exchanges*, WALL STREET J., Dec. 8, 2015.
[21] Sara Hansard, *More Than $200M Recouped From State ACA Exchanges, Official Says*, BLOOMBERG, Dec. 9, 2015.
[22] Peter Sullivan, *Lawmakers Press Obamacare Chief on State Money Troubles*, THE HILL, December 8, 2015.
[23] Paige Winfield Cunningham, *Official Under Fire for Oversight of Obamacare Funds,* THE WASH. EXAMINER, Dec. 8, 2015.
[24] Email from committee staff to CMS staff (Dec. 9, 2015) (on file with Committee).

In the briefing with committee staff, Ms. Cohen was unprepared to answer questions regarding the $200 million figure on the questions that committee staff had sent CMS ahead of the briefing. Ms. Cohen did not tell committee staff from which states CMS recovered grant money from, or for what reason the money was recovered. Appendix C contains a detailed timeline of the committee's efforts to obtain this information.

Over three months after the hearing, Mr. Slavitt and Oversight and Investigations Committee Chairman Tim Murphy (R-PA) spoke on the phone about the committee's request for information regarding Mr. Slavitt's testimony and the documentation for the $200 million figure. Mr. Slavitt informed Congressman Murphy that the reason for the delay in providing information supporting his testimony was that CMS was "still checking the numbers."[25]

VI. CMS Documents Contradict Acting Administrator Slavitt's Testimony

FINDING: Mr. Slavitt's testimony that "over $200 million" has been returned to the federal government is not supported by any CMS documents, including a chart created by CMS staff and produced to the committee.

On March 18, 2016, three months after the committee's request, CMS provided the committee with a chart, created by CMS staff, that outlines the grants awarded to 49 states and the District of Columbia, the amount of the grant, and the amount de-obligated. CMS did not provide any primary source documents, such as the grant applications, the grant awards, or other materials supporting the de-obligation of these funds. CMS did provide a narrative response, explaining that all of the grants on CMS' chart represent funds that were de-obligated or never disbursed to the states because the grant had closed before the grantee used the funds. The narrative explains that the numbers in the chart do not include "unallowable costs" CMS is working to recover from states that spent federal money improperly.[26] The chart CMS produced to the committee is included in Appendix B.

After a thorough review of the materials provided by CMS, the committee has found that Mr. Slavitt's testimony before the Oversight and Investigations Subcommittee on December 8, 2015, is not supported by any documents produced by CMS and is misleading in two areas. First, it misstates the amount of the grants returned to the Treasury, and second, the testimony wrongfully implies the funds were returned because of improper spending and CMS' oversight efforts.

[25] Phone call between Hon. Tim Murphy, Chairman, Subcomm. on Oversight & Investigations, H. Comm. on Energy & Commerce, and Andrew Slavitt, Acting Administrator, Centers for Medicare & Medicaid Serv. (March 15, 2016).
[26] CMS Chart, *supra* note 11.

A. *Mr. Slavitt's testimony incorrectly states the amount of federal funds returned to the Treasury*

FINDING:	**Mr. Slavitt's testimony greatly overstated the sum returned to the Treasury from state-based exchanges—by nearly $180 million. CMS only recouped $21.5 million from the 16 states and the District of Columbia that actually established state-based exchanges.**

Mr. Slavitt testified that "[o]ver $200 million of the original grant awards have already been returned to the federal government."[27] CMS documents, however, show that of the $4.6 billion awarded to the 17 states that established SBEs, only $21.5 million was returned to the Treasury—or less than half of one percent of the total awards.[28]

Early in his opening testimony, Mr. Slavitt clearly addressed the issue of the struggling SBEs:

> In discussing now our three key oversight priorities, **I want to focus in particular on those situations where States have had more significant challenges**. Our first priority is to be good stewards of the Federal taxpayers' dollars. This means returning unspent dollars to the Treasury and closing grants, collecting improperly spent dollars, and preventing more from going out the door. **Over $200 million of the original grant awards have already been returned to the Federal Government, and we're now in the process of collecting and returning more.** This also means no new money to fix IT problems was given or will be given to any of the five States or any other State that ran into difficulties. We should not pay twice for the same result.[29]

Mr. Slavitt announced the $200 million figure during his discussion of oversight priorities for SBEs with "more significant challenges," not a discussion about the 34 states without a state exchange.[30] Furthermore, Mr. Slavitt implied that the $200 million was returned because of improper expenditures, stating that "we're now in the process of collecting and returning more."[31]

Even interpreted in a light most favorable to CMS, the documents do not support Mr. Slavitt's testimony. As discussed in Section III, soon after the law was passed, CMS awarded grants to 49 states and D.C. to establish SBEs, but 34 states declined to do so. Documents provided to the committee show that of the $5.5 billion awarded to 49 states and D.C., approximately $319 million in unspent grant money was returned to the Treasury. The vast

[27] Part II, *supra* note 17.
[28] CMS Chart, *supra* note 11.
[29] Part II, *supra* note 17 (emphasis added).
[30] *Id*.
[31] *Id*.

majority of these funds—nearly $300 million—was returned because CMS awarded the funds to states that never established a SBE. As a result, those grants were necessarily closed.[32]

B. *Mr. Slavitt's testimony wrongfully implied the funds were returned because of improper spending and CMS' oversight efforts*

FINDING: CMS does not appear to have made an effort to correct the record when it was widely reported that "over $200 million" was returned to the Treasury because of improper spending and CMS' oversight efforts. Despite Mr. Slavitt's implication otherwise, CMS did not recover any of the funds due to improper spending. Instead of recouping funds from the exchanges, CMS simply "de-obligated" these funds because the time for the grant had expired or the funds were no longer needed.

Mr. Slavitt's testimony wrongfully implied the funds were recouped because of improper spending, rather than simply de-obligated because the grant was closed. According to CMS, the funds Mr. Slavitt referenced during the hearing were "de-obligated" because the grantee had completed all the work associated with the grant agreement, or the end date for the grant had arrived. In other words, these numbers simply represent that amount of money leftover in the grant that CMS did not authorize because the grant had closed. In fact, CMS acknowledged that the grant information provided to the committee supporting Mr. Slavitt's testimony "does not contain the unallowable costs that we are working with states to recover."[33]

Because Mr. Slavitt made his remarks in the context of recouping misspent funds from the 17 SBEs, it was widely assumed–and reported in the media–that the $200 million figure represented funds recouped because CMS found SBEs spent them improperly.

VII. Conclusion

After a thorough review, the committee has found that the documents provided by CMS do not support Mr. Slavitt's testimony before the committee. It appears Mr. Slavitt misled Congress and the American people by providing false information under oath. Mr. Slavitt testified that over $200 million of original state exchange grant awards had been returned to the Treasury. In reality, CMS de-obligated $21.5 million intended for the 17 SBEs. Mr. Slavitt's testimony is still inaccurate when the committee takes into account grants returned from 34 states that did not even establish SBEs.

[32] Even if Mr. Slavitt intended to include all 49 states and the District of Columbia in his calculation, including those that did not establish a SBE, his testimony would have stated over $300 million, not over $200 million, had been returned. Furthermore, the increase in CMS' figures, from $200 million to $300 million, cannot be justified by the passage of time. CMS' chart provided to the Committee reflects the grant numbers as of November 30, 2015, about a week before Mr. Slavitt's testimony.

[33] CMS Chart, *supra* note 11.

Mr. Slavitt led both the committee and the press to believe that the money was returned to the Treasury because of improper spending and CMS' oversight efforts. Instead, the funds were returned because the grants had closed—because either the end date for the grant arrived or all the work had been completed. In the case of the 34 FFM states, the vast majority was returned because they declined to set up SBEs. No part of Mr. Slavitt's $200 million figure included federal funds that had been returned because of improper spending.

CMS did not provide the committee with information regarding Mr. Slavitt's testimony in a timely manner. The committee expects that testimony before the committee be truthful and based on fact, and CMS should be willing and able to immediately provide information supporting testimony from its officials.

Based on Mr. Slavitt's false and misleading testimony, CMS' ability to determine whether a state exchange spent federal dollars in accordance with the law and its ability to properly implement the law is called into question. As a result, it appears that Mr. Slavitt's testimony before the committee was based on estimates and conjecture, not facts. Mr. Slavitt's original source for the "over $200 million" figure he testified to has still not been provided to the committee.

CMS officials must make tough decisions, and implementing a law as broad and unwieldy as PPACA is a daunting task. However, it is never acceptable for administration officials to distort the truth to avoid Congressional and public scrutiny.

Appendix A

This chart reflects the amounts CMS awarded to the 50 states and the District of Columbia to establish state-based exchanges. 34 states did not set up state-based exchanges, although seven accepted funds to perform consumer assistance functions. Only 16 states and the District of Columbia established state based exchanges. The overwhelming majority of the de-obligated grant funds come from states that declined to set up exchanges.

States	Amount CMS Awarded	Amount CMS De-Obligated
<u>17 State-Based Exchanges</u> California, Colorado, Connecticut, District of Columbia, Idaho, Kentucky, Maryland, Massachusetts, Minnesota, New York, Rhode Island, Vermont, Washington, Oregon, Nevada, New Mexico, Hawaii. Four of the above state-based exchanges failed and now use the federal IT platform, healthcare.gov.	$4.6 Billion	$21.5 Million
<u>7 State-Partnership Exchanges</u> Arkansas, Delaware, Illinois, Iowa, Michigan, New Hampshire, West Virginia. These states only control in-person consumer assistance; HHS controls the rest of the	$483 Million	$12.8 Million

functions, and these states use healthcare.gov.		
27 Remaining States The majority of the states did not establish state-based exchanges, and are covered by the Federally-Facilitated Exchange, solely controlled by HHS.	$481 Million	$285 Million

Appendix B

The following pages in "Appendix B" are copies of documents produced by CMS to the Committee on March 18, 2016.

The chart was created by CMS staff. CMS did not provide any primary source documents or other materials supporting the figures in the chart.

Request #1: State exchanges (follow up questions from hearing Dec. 8, and briefing Jan. 12):

- **A breakdown of the $200 million recouped by CMS from state exchanges – by state, amount, date and why the funds were returned.**

Section 1311 Grants - Obligations and Deobligations as of 11/30/15			
State	**Marketplace grant funding awarded**	**Deobligated**	
State-Based Marketplace			
California	1,065,683,056.00	(470,105.63)	02/29/2012
New York	575,079,804.00	(4,544,589.81)	02/10/15; 05/01/15
Washington	302,333,280.00		
Kentucky	289,303,526.00	(530,911.65)	02/29/2012
Massachusetts	233,803,787.00		
Vermont	199,718,542.00		
District of Columbia	195,141,151.00	(634.50)	05/01/2015
Maryland	190,130,143.00	(192.84)	05/21/15; 05/27/15; 09/11/15
Minnesota	189,363,527.00	(100,119.84)	09/11/2015
Colorado	184,986,696.00		
Connecticut	175,870,421.00	(43,332.99)	12/19/12; 05/21/2015
Rhode Island	152,574,494.00	(29,019.36)	05/22/2013
Idaho	105,290,745.00		02/29/2012
Subtotal	**3,859,279,172.00**	**(5,718,906.62)**	
State-Based Marketplace using the Federal Platform			
Oregon	305,206,587.00		
New Mexico	123,281,600.00	(15,720,604.81)	05/01/15; 09/03/15
Nevada	101,001,068.00	(12,000.00)	10/16/14

Hawaii	205,342,270.00		01/19/2016
Subtotal	**734,831,525.00**	**(15,732,604.81)**	
Federally-facilitated Partnership			
Illinois	164,902,306.00	(71,411.68)	02/08/2013
Arkansas	158,039,122.00	(44,928.17)	01/23/2013
Iowa	59,683,889.00	(1,838,473.61)	05/24/13; 08/27/13; 05/29/14
Michigan	41,517,021.00	(9,915,298.03)	06/11/13; 08/01/13
Delaware	22,236,059.00		
West Virginia	20,832,828.00	(17,028.76)	05/20/2015
New Hampshire	15,919,960.00	(999,080.73)	05/01/2015
Subtotal	**483,131,185.00**	**(12,886,220.98)**	
Federally-facilitated Marketplace			
North Carolina	87,357,314.00	(73,520,471.03)	09/09/13; 04/30/15
Oklahoma	55,608,456.00	(54,710,475.69)	11/25/11; 11/16/12
Mississippi	42,712,661.00	(329,874.63)	04/13/2012
Wisconsin	39,057,947.00	(34,371,180.79)	05/28/15; 09/25/15
Pennsylvania	34,832,212.00	(33,778,843.01)	10/16/13; 10/16/14; 06/10/15
Kansas	32,537,465.00	(31,527,074.98)	02/10/2012
Arizona	30,877,097.00	(6,595.24)	06/30/14; 09/30/2015
Missouri	21,865,716.00	(19,586,468.42)	08/21/2013
Virginia	15,862,889.00		
Alabama	9,772,451.00	(6,284,785.38)	08/15/13; 05/1/15
Tennessee	9,110,165.00	(6,557,668.47)	05/24/13; 10/17/13; 05/29/15; 9/30/2010
New Jersey	8,897,316.00	(7,713,826.08)	05/29/14; 05/1/15

Indiana	7,895,126.00	(978,071.48)	02/29/12; 10/16/13; 06/17/15
South Dakota	6,879,569.00	(4,962,486.88)	05/16/14; 05/01/15; 09/03/15
Maine	6,877,676.00	(5,877,834.79)	06/29/12; 11/01/12
Nebraska	6,481,838.00	(949,914.31)	2/28/12; 10/16/13; 5/27/12
Utah	6,407,987.00	(26,326.62)	05/13/13; 06/17/15
Florida	1,000,000.00	(1,000,000.00)	02/29/2012
Georgia	1,000,000.00	(10,270.21)	08/01/2013
Montana	1,000,000.00		
North Dakota	1,000,000.00	(3,984.00)	12/12/12; 09/11/15; 09/18/15
Ohio	1,000,000.00	(81,905.39)	06/30/2014
South Carolina	1,000,000.00	(695,003.54)	05/23/2012
Texas	1,000,000.00	(903,574.59)	02/29/2012
Louisiana	998,416.00	(969,025.00)	12/14/2011
Wyoming	800,000.00	(267,792.19)	10/01/10; 6/10/15
Subtotal	**431,832,301.00**	**(285,113,452.72)**	
Total	**5,509,074,183.00**	**319,451,185.13**	

As previously reported by CMS as well as by the GAO, CMS has awarded approximately $5.5 billion in section 1311 grant awards for the planning and establishment of State-based Marketplaces. As of November 30, 2015, over $300 million of the $5.5 billion has been deobligated and returned to the federal government.

As Mr. Slavitt previously testified, CMS is in the process of collecting and returning more of the grant funds to the federal government through the grant closeout process, as well as through audits that identify any unallowable costs. As Dr. Cohen described during her briefing, section 1311 grants are closed out once the grantee has completed all the work associated with a grant agreement or the end date for the grant has arrived, or both.

Note, the chart above does not include the $32.5 million that Maryland has agreed to return to the federal government due to their legal settlement with their contractor. It also does not contain the unallowable costs that we are working with states to recover that Dr. Cohen spoke about at her briefing.

- **How many federal funds have been used to transition states like Hawaii and Oregon away from the state exchange model to the federal IT platform?**

As Dr. Cohen explained at her briefing, HealthCare.gov is a scalable platform, meaning that the cost to provide eligibility and enrollment functionality for additional states is marginal. CMS obligated $7.3 million in Fiscal Year (FY) 2014 to complete the federal IT and system changes related to the transition for Oregon, Nevada, and New Mexico to the HealthCare.gov platform. CMS is currently finalizing the amount obligated to transition Hawaii to HealthCare.gov.

Oregon, Nevada, New Mexico, and Hawaii did not receive new 1311 grant awards to transition to HealthCare.gov. These states were required to re-budget any remaining funds in existing 1311 grants for allowable activities only. For example, Hawaii submitted a budget request for about $7.2 million for activities that Hawaii is required to continue to provide as a SBM-FP (such as establishment activities related to SBM responsibilities like plan management). CMS reviewed the request and approved approximately $6.9 million as allowable activities. For these states, CMS is currently going through the closeout process for their grants and remaining funds will be deobligated and returned to the federal government.

- **What were the federal funds used for?**

Section 1311 grants may only be used for allowable activities as determined by the HHS grant policy and the Affordable Care Act. After January 1, 2015, 1311 grant funds may only be used for establishment activities and may not be used to support ongoing operations. HHS grants policy also allows grant funds to be used for associated grant close out procedures.

As such, any state transitioning to a SBM-FP can request funds for establishment activities for which it remains responsible and for activities required to close out its grant. A state transitioning from a SBM to SBM-FP could not use 1311 funds for IT system costs that are associated with a transition to the FFM platform.

- **How did CMS approve the use of those funds?**

CMS reviews each budget requests from section 1311 grantees for allowability and reasonableness per the HHS grants policy and the Affordable Care Act, and makes a determination for the approved amount that may be drawn down according to the grantee's budget request.

- **How many state exchanges have No-Cost Extensions approved for 2016?**

1. Connecticut
2. DC
3. Idaho
4. Massachusetts
5. Minnesota
6. Rhode Island
7. Vermont
8. Washington
9. California

10. Colorado
11. Hawaii
12. Kentucky
13. Maryland
14. Nevada
15. New York
16. New Mexico

Appendix C

Timeline for $200 million documents re: state exchanges

Dec. 8, 2015: CMS Acting Administrator Andrew Slavitt testified before the Oversight and Investigations Subcommittee on struggling state exchanges. Mr. Slavitt testified that "[o]ver $200 million of the original grant awards have already been returned to the Federal Government, and we're now in the process of collecting and returning more."

Dec. 9, 2015: Committee staff emailed CMS staff to request a staff level briefing concerning Mr. Slavitt's testimony. Specifically, committee staff asked CMS staff to answer "how did CMS take back the $200 million from the state exchanges?" and "[f]rom which states and for what?"

Dec. 11, 2015: Committee staff and CMS staff discussed the committee's request for a briefing.

Dec. 16, 2015: Committee staff emailed CMS staff to reiterate the committee's request for a briefing, after hearing no response.

Dec. 17, 2015: Committee staff and CMS staff discussed the committee's request for a briefing. CMS staff is reluctant to provide the requested briefing.

Dec. 28, 2015: CMS staff offers dates to schedule a briefing.

Jan. 12, 2016: CMS staff briefed committee staff on follow-up questions to the state exchange hearing. CMS staff clarified that the $200 million figure referred to grant money that had originally been allocated but not disbursed, and that CMS simply chose not to disburse the money in some of the grants. CMS did not provide the Committee with any documentation or information supporting the $200 million number, such as which states the funds came from, why CMS decided not to allocate the money, when the decision was made, etc. Committee staff again requested that information.

Jan. 13, 2016: Committee staff emailed CMS staff with a list of follow-up questions from the briefing, including the initial underlying question that had not been answered: "a breakdown of the $200 million recouped by CMS from state exchanges – by state, amount, date and why the funds were returned."

Jan. 21, 2016: Committee staff emailed CMS staff about the outstanding request, after hearing no response.

Jan. 27, 2016: Committee staff emailed CMS staff again about the request, after hearing no response. CMS staff responds, "we're working on those Qs and should get you something shortly."

Feb. 11, 2016: Chairman Murphy called Mr. Slavitt to ask about the status of the follow-up information on the $200 million from state exchanges. Mr. Slavitt responded that CMS staff was working quickly to response to committee requests.

Feb. 12, 2016: Committee staff calls CMS staff to follow-up on Chairman Murphy's call, and CMS staff promised to prioritize the $200 million state exchange grant information, and hoped to send it to the committee the week of February 15.

Feb. 17, 2016: CMS staff emailed Committee staff that the information would not arrive this week.

Mar. 3, 2016: Committee staff emailed CMS staff for an update on the requested information – no response from CMS.

Mar. 15, 2016: Chairman Murphy and Mr. Slavitt have a phone conversation about outstanding committee document and information requests, including about the request regarding the $200 million from state exchanges. Mr. Slavitt reports to Chairman Murphy that CMS is still "checking the numbers," but CMS should be able to provide that information to the committee by the end of the week.

Mar. 18, 2016: CMS staff provided the Committee with information and a chart regarding the $200 million figure.